

Before the
Federal Communications Commission
Washington, DC 20554

FEB 6 12 06 PM '04

In the Matter of)

Request for Waiver by)

St. Boniface School)
Elmont, New York)Schools and Libraries Universal Service)
Support Mechanism)

Billed Entity No. 11389

CC Docket No. 02-6

ORDER

Adopted: February 5, 2004

Released: February 6, 2004

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Waiver filed by St. Boniface School, Elmont, New York (St. Boniface).¹ St. Boniface requests a waiver of the Commission's rules governing the schools and libraries universal service support mechanism, specifically, the 28-day competitive bidding requirement.² For the reasons set forth below, we deny the Waiver Request.

2. In order to comply with the program's competitive bidding requirements and also file a Form 471 application within the filing window, it was incumbent upon applicants in Funding Year 2003 to have their Forms 470 posted on or before January 9, 2003.³ St. Boniface requests a waiver of our rules, in particular, the 28-day competitive bidding requirement, because the employee responsible for submitting E-rate forms was unable to submit such forms due to extenuating personal circumstances.⁴ Specifically, the employee was taking care of an immediate family member who was suffering from a serious illness which required many medical evaluations and treatments and time away from the office. St. Boniface states that when it discovered that it had missed the filing deadline for FCC Form 470, it contacted the SLD's

¹ Letter from Marylou Pawlowski, St. Boniface School, to Federal Communications Commission, filed January 15, 2003 (Waiver Request).

² *Id.*

³ 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

⁴ See Waiver Request.

help line for guidance and immediately filed the instant request.⁵ St. Boniface further states that there are no other employees familiar with the E-rate process.⁶

3. We find that a waiver is not appropriate. A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than strict adherence to the general rule.⁷ St. Boniface's assertion that the unavailability of staff contributed to the late submission of FCC Form 470 is not a special circumstance warranting a waiver of our rules.⁸ The Commission has consistently held that it is the applicant who has responsibility ultimately for the timely submission of the application.⁹ Therefore, we deny the Waiver Request.

⁵ *Id.*

⁶ *Id.*

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert. denied*, 409 U.S. 1027 (1972).

⁸ See, e.g., *Request for Waiver by Hancock County Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-318275, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 19521 (Wireline Comp. Bur. 2002).

⁹ See, e.g., *Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21521 (Wireline Comp. Bur. 2003); *Request for Waiver by Center City Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-3256719, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22424 (Wireline Comp. Bur. 2003).

4. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Waiver filed by St. Boniface School on January 15, 2003 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Narda M. Jones
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau